

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TED NODINE MAWHINNEY, and JEFFREY DON DAVIS

Appeal No. 2002-2081
Application 09/304,188

ON BRIEF

Before JERRY SMITH, BLANKENSHIP, and SAADAT, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-19, which constitute all the claims in the application.

The disclosed invention pertains to a method and apparatus for alleviating congestion in a communication network. A particular feature of the invention is that the data flow rate is controlled at the end user device in response to a congestion condition.

Representative claim 1 is reproduced as follows:

1. A method for alleviating congestion in a communication network, the communication network enabling the flow of data to and from a plurality of end user devices that are connected to the network through a plurality of communication devices, the method comprising the steps of:

monitoring data flows to and from the plurality of end user devices for indications of congestion; and

controlling the data rate of at least one end user device in response to said congestion indications.

The examiner relies on the following reference:

Shimony et al. (Shimony) 5,898,669 Apr. 27, 1999

Claims 1-19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Shimony.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's

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rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the disclosure of Shimony does not fully meet the invention as set forth in claims 1-19. Accordingly, we reverse.

Appellants have indicated that for purposes of this appeal the claims will all stand or fall together as a single group [brief, page 3]. Consistent with this indication appellants have made no separate arguments with respect to any of the claims on appeal. Accordingly, all the claims before us will stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Therefore, we will consider the rejection against independent claim 1 as representative of all the claims on appeal.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and

Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he finds the claimed invention to be fully met by the disclosure of Shimony [answer, pages 3-4]. Appellants argue that the rate control in Shimony occurs in the Asynchronous Transfer Mode (ATM) edge devices and not in the end user devices as claimed. Appellants assert that there is nothing in Shimony to suggest that the transmission rate of data packets from an end user device is controlled [brief, pages 4-13]. The examiner responds that it is evident according to Shimony's invention that not only the end user device is controlled but also other devices in the system are controlled as well in order to manage congestion and traffic flow in the system [answer, page 5]. Appellants respond that the examiner failed to respond to any of their arguments set forth in the brief. Appellants argue that the end user device 32 in Shimony continues to send data packets to the edge device 30 regardless of the congestion in the network [reply brief, pages 2-4].

We will not sustain the examiner's rejection of claims 1-19 as anticipated by the disclosure of Shimony. Although Shimony clearly discloses a method and apparatus for alleviating congestion in a communication network, it is not clear that

Shimony controls the data rate of at least one end user device as claimed. As noted by appellants, they have presented considerable analysis as to how and why the data rate control in Shimony occurs in the ATM edge device as opposed to the end user device. The ATM edge device is part of the communication network and does not constitute an end user device. The examiner has failed to rebut appellants' arguments that Shimony does not control the data rate of an end user device with any meaningful analysis. The examiner has not addressed the argued differences between the ATM edge device and an end user device nor explained why he believes that Shimony does, in fact, control the data rate at the end user device. On the record before us, appellants have presented a persuasive case as to why the claimed invention is not anticipated by Shimony, and the examiner has failed to rebut appellants' case with any meaningful analysis. It was incumbent upon the examiner to specifically point out the errors in appellants' arguments.

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In summary, the record in this case does not support the examiner's rejection of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-19 is reversed.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
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HOWARD B. BLANKENSHIP)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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MAHSHID D. SAADAT)	
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